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7
8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN JOSE DIVISION**

11 ISAI BALTEZAR & JULIE CHO,

12 Plaintiffs,
13 v.

14 MIGUEL CARDONA, in his official
capacity as Secretary of Education, *et al.*,

15 Defendants.

16 Case No. 5:20-cv-455-EJD

17 **STATEMENT OF RECENT DECISION**

18 Date: March 24, 2022
19 Time: 9:00 a.m.
20 Place: Courtroom 4, 5th Floor
21 Judge: Hon. Edward J. Davila

22 Pursuant to Local Civil Rule 7-3(d), Defendants file this Statement of Recent Decision
23 regarding a recent Order issued in this District. *See Order Granting Motion to Remand and*
Denying Motions for Summary Judgment as Moot, *Ctr. for Envil. Health v. Vilsack*, No. 18-cv-
25 1763-RS, 2022 WL 658965 (N.D. Cal. Mar. 4, 2022) (attached). The court in *Ctr. for Envil.*
27 *Health* granted the U.S. Department of Agriculture's motion for voluntary remand without
vacatur where, similar to this case, the prior Administration had withdrawn a rule, the plaintiffs
challenged the Withdrawal Rule, and the new Administration planned to start anew with a new
rulemaking. *Id.* at *1. In declining to vacate the Withdrawal Rule, the court recognized that "the
law is unsettled on whether vacatur is permitted before a final judgment on the merits." *Id.* at *4.
The court also held that, even if vacatur were permitted, it was not appropriate because, under

the first prong of the *Allied-Signal* test—the seriousness of the Withdrawal Rule’s deficiencies—any such deficiencies “should count for less in the pre-judgment context.” *Id.* Moreover, in regard to the second *Allied-Signal* prong—the disruptive consequences of an interim change that may itself be changed—the court recognized that allowing the prior rule to “immediately spring into effect” would force regulated entities to “scramble into compliance with a temporary rule,” and would likely force the agency to “waste administrative resources to mitigate the chaos.” *Id.* The court’s ruling and reasoning are relevant to Defendants’ Motion for Voluntary Remand Without Vacatur [ECF No. 48], currently pending before the Court.

DATED: March 14, 2022

Respectfully submitted,

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